App.F.IX-4

1923-24

File No. 86-23

Previous References Reforms.)

Serial Nos. Notes only (2)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. P-11

Part B for Octr. 1923.

SUBJECT

Reservation of power to make laws for the peace and tranquility of the State.

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Reservation of power to make laws for the peace and tranquillity of the State.

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Reference is invited to the following remarks of the Reforms committee at page 82 of their Report.

204. Turning now to the constitution of Mysore, the express reservations of law-making power in the Regulation establishing a Legislative Council relate to the following:—

(*a*) The Government may frame any Regulation on any of the excluded subjects, and this, subject to the assent of the Ruler, has the force of law. This provision will be retained. The Committee by a majority of six against four (these being Dewan Bahadur Puttanna Chetty, Messrs. Venkatesaiya, Srinivasa Rao and Subbaiya) further resolved that it should be specified by law that Regulations may similarly be framed for the safety or tranquillity of the State. No certificate is of course contemplated,—the opinion of the Government to this effect would be both necessary and sufficient;

(*b*) The Government can frame emergent Regulations on other subjects, which, if assented to by the Ruler, have the force of law for six months.

It is not clear whether the committee's intention is that measures relating to the safety and tranquillity of the State should be treated exactly like measures relating to subjects excluded from the purview of the Legislative Council. The latter, it will be observed, are totally outside the scope of the Council and cannot go before ~~them~~ it at all. If therefore, questions relating to the safety and tranquillity of the State are to be treated on a par with questions relating to excluded subjects, they would have to be classed as such and included in

Mysore and the intended

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in the proviso to clause 2 of section 12 of the Regulation.

If this is not the committee's intention, then it would mean that Government would have to place a measure relating to the safety and tranquillity of the State before the Legislative Council like any other measure. If the Council passes it, then it would become law in the usual course after His Highness has assented to it. If the Council does not pass it, it would still be within the power of the Government to submit the measure to His Highness for assent and, on such assent being given, the measure would become law.

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(PP9 & 10 agenda calls.)

The power reserved by local Governments and the Government of India in this matter is contained in section 71 and section 72 of the Government of India Act.

The local Government of any province may propose to the Governor-General in Council the draft of any regulation for the peace and good Government of that province with the reasons for proposing the regulation. When the draft Regulation has been approved by the Governor-General in Council and assented to by the Governor General it is published in the Government of India Gazette and in the local official gazette and becomes law.

As regards the Government of India, the Governor-General may in cases of emergency make and promulgate ordinances for the peace and

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and good government of British India or any part thereof, such ordinanaces having the force of law for a period of six months. ~~Power~~ Power ~~power~~ is also reserved to the Governor General and the Government to certify that a bill or an amendment to a bill affects the safety and tranquillity of British India or the local province and to direct that all proceedings with respect to it shall cease.

In the Travancore Legislative Council Regulation, powers of certification similar to the powers of the Government of India are retained. ~~and~~ ~~[illegible]~~ the Legislative Council refuses leave to introduce or fails to pass a bill in a form recommended by the Travancore Government, the Dewan has the power of certifying that the passage of the bill in that form is necessary for the safety and tranquillity or interests of the State of Travancore and of submitting it to His Highness the Maharaja for assent. On the signification of such assent, the bill becomes law.

In our present Legislative Council Regulation, there is no reference whatever to the subject of safety and tranquillity of the State. Nor is there any reference made to it in the draft Regulation that has been separately submitted. This was because it was considered that Government would ordinarily have no difficulty in getting measures relating to the safety and tranquillity of the State passed by the Legislative

NOTE—Contn. sheet.

Legislative Council. If ever there ~~was~~ should be any difficulty, there is provision for promulgating the necessary measure under Section 15 of the Draft Regulation. And there is also the power reserved to Government to frame necessary regulations to meet emergent cases which become law after they are assented to by His Highness.

As regards the power of certification in connection with bills retained in British India and in Travancore, it seems to be unnecessary to retain it here as there is no chance of any bill affecting the tranquillity and safety of the State being introduced by a private member into the Mysore Legislative Council, since such introduction can take place only with the sanction of the Dewan and he is sure to prohibit its introduction.

The power of certification regarding amendments to bills stands perhaps on a slightly different footing since under the present law they can be discussed and decided upon by the Legislative Council. In such a case the only course open is for the bill to receive His Highness' assent with the omission of the amendment.

This matter was informally discussed in Council in connection with a letter to the Resident Residency and the general trend of discussion

was

was against retaining any special powers - whether of certification or otherwise- but the point is raised here for definite orders.

Ch. Secy | RR 22/9

The Committee's recommendation regarding ~~the~~ application of H.H.'s powers of legislation independently of the Leg. Cl. has been accepted & such an application as in the Draw. Rept has been included in the draft Rept & the draft Proclamation. It may however be held that these reserve powers may be exercised whenever the Govt. find that they cannot pass through the Leg. Cl a measure which they consider necessary for the safety and tranquillity of the State. The majority of the Committee ~~do~~ held that Govt should have the power, as in the case of excluded subjects, of passing laws for the safety and tranquillity of the State & accordingly in their Draft H.H. This is a provision which is in effect similar to that of certification,

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and was prepared with a view to make the Executive responsible for such measures, ~~to~~ and avoid H.H. having to issue to go against the Ly-Cl, and also in view of the fact that H.H.'s reserve powers might in course of time & circumstances come to be not used — except for changes with constitutional steps.

In this view seems necessary to accept the Committee recommendations

by 28/9

always)

RR 24/9.

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recommendations with submitted Members

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Urgent Subject:

Reservation of power to make laws for the peace and tranquillity of the - State.

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OPINION OF THE COUNCIL.

Note in Council

Not necessary.

3/10/23

Special Officer Reforms
with compliments.

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G. R. S. III-2]

General and Revenue Secretariat.	File No.	of 19 .

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A draft order has to be put up in this case perhaps. Orders solicited.

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I do not think a formal G.O. is necessary in this case -

RR
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Ch. Secy.

Japee -

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NOTE—Contn. sheet.

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Extract from the Government of India Act.

Regulations and Ordinances.

Power to make Regulations.

71. (1) The local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good - government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the "Indian legislature".

(3) The Governor General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(3A. A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.)

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the "Indian legislature" but the power of making ordinances under this section is subject to the like restrictions as the power of the (Indian Legislature) to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the (Indian legislature) and may be controlled or superseded by any such Act.

Power to make ordinances in case of emergency.

Extract from the Travancore Regulation.

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Powers of the Dewan in certain cases.

13. (1) Where in the Council any Bill has been introduced or is proposed to be introduced or any amendment to a Bill is moved or proposed to be moved, Our Dewan may certify that the Bill, or any Clause of it or the amendment affects the safety or tranquility of Travancore or any part thereof, and may direct that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, Clause, or amendment, and effect shall be given to such direction.

(2) Where the Council refuses leave to introduce or fails to pass in a form recommended by Our Government any Bill, Our Dewan may certify that the passage of the Bill in that form is essential for the safety, tranquility or interests of Travancore and submit the same for our assent, and on the signification of our assent such Bill shall become law.

x x x x x